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GOVERNMENT RELATIONS
JEFFREY R. PIKE

BY HAND

Mr. Kenneth R. Wykle
Motor Carrier Division
Federal Highway Administration
400 Seventh Street, S. W., Room 42 18
Washington, D.C.

Re: Federal Motor Carrier Safety Regulations (FMCSRs) - Responsibility for Roadworthiness of Equipment Used in Inter-modal Transportation

Dear Mr. Wykle:

This firm represents the Equipment Interchange Discussion Agreement, (EIDA) an association of nine major ocean common carriers organized under the Shipping Act of 1984. Enclosed for your review please find EIDA's comments in opposition to the "Joint Petition Requesting Adoption of Rules Requiring Party Tendering Equipment to be Used In Intermodal Transportation Be Required to Ensure Roadworthiness and Compliance of Such Equipment With FMCSRs Prior to Tendering Equipment" submitted by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (AIC) on March 17, 1997.

As more fully set forth in EIDA's attached statement of points, the members of EIDA believe that the requested amendments to the Federal Motor Carrier Safety Regulations should not be adopted for several reasons. First, the current regulations and inspection process already adequately ensures the safety of intermodal equipment at a relatively modest cost to all parties involved. All that is expected of drivers is to perform a brief check of lights, brakes and tires. This typically takes 5 to 10 minutes by the driver, and is, in any event, required by FHWA regulations. In contrast, the changes

requested by petitioners potentially would result in huge cost increases for carriers and shippers, with no safety benefit gained. In fact, as discussed below, safety may very well be compromised.

Second, ocean common carriers and other equipment providers regularly already undertake responsibility for maintaining and repairing equipment, and making repairs brought to their attention by truck drivers. However, common sense and prudent operating procedures require that the trucker, who operates equipment on the roads, be responsible for a walk-around inspection of the equipment before he or she drives away with it. This is particularly the case since many inter-modal facilities have hundreds of chassis entering and leaving on behalf of numerous shippers and carriers during all hours of the day and night.

Third, recent trends in modem intermodal transportation, including the use of container equipment depots and chassis pools, make it completely impracticable for anyone other than the truckers to be responsible for pre-drive equipment inspection. Requiring equipment owners, carriers, shippers, consignees and facility operators to perform this basic function would create the need to hire inspectors at each of the thousands of facilities across the country, which would result in inland and port delays and tremendous cost increases for all concerned.

Finally, we would underline that adopting the provisions suggested in the petition would instantaneously subject literally thousands of equipment providers – including carriers, shippers, consignees, equipment pool operators, lessors, and others – to a regulatory regime that we believe the organic legislation never intended. This type of draconian increase in regulation and effort to reallocate responsibility should only be undertaken based on a clear legislative directive by Congress. It will also inevitably lead to years of confusion as to responsibility for equipment safety. There is no such confusion today. EIDA urges DOT not to introduce chaos into a reasonably safe, efficient and well functioning system.

EIDA respectfully requests that the Administration consider the attached statement of points and reject the amendments to the Federal Motor Carrier Safety Rules requested by petitioners. Should you have any questions, or like additional information, please do not hesitate to contact undersigned counsel.

Sincerely,

Jeffrey F. Lawrence /KO

Jeffrey F. Lawrence
Kelly A. O'Connor
Attorneys for the Equipment
Interchange Discussion Agreement.

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

In the Matter of American Trucking Associations, Inc. And ATA Intermodal Conference, Petitioners.	)	Petition for Rulemaking 49 C.F.R. § 389.31

COMMENTS OF EQUIPMENT INTERCHANGE DISCUSSION AGREEMENT IN OPPOSITION TO ATA PETITION

The Equipment Interchange Discussion Agreement (EIDA) is an association of nine major international ocean common carriers. EIDA is organized under the Shipping Act of 1984 and is primarily concerned with issues pertaining to equipment use and availability in the United States. EIDA's members are: A.P. Moller-Maersk Line, American President Lines, Ltd., Hapag-Lloyd Container Linie GmbH, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha Line, P&O Nedlloyd B.V., P&O Nedlloyd Limited, Orient Overseas Container Line, Inc., and Sea-Land Service, Inc.

EIDA respectfully requests that the FHWA decline to initiate a rulemaking as requested in the ATA's March 17, 1997 "Joint Petition". EIDA members strongly reject the notion that there is any burden on truckers under current operating arrangements. In contrast, adopting the ATA's proposal would result in huge cost increases for equipment providers and shippers, delays at port and inland facilities across the country, and tremendous confusion about matters relating to inspection, liability, equipment use and availability, and other arrangements that are very well-settled and understood today.

EIDA's more specific comments are set forth below.

COMMENTS

1. At the outset, it is important to emphasize the fact that equipment providers are presently responsible for maintaining equipment and repairing damaged equipment once such repairs are brought to their attention. In addition, equipment owners are already responsible for having their equipment pass annual FHWA safety inspection certification, and state safety inspection certifications, which are required in most states as often as every 90 days. For their part, truckers' must conduct a brief roadability inspection of tires, lights and brakes. This inspection is required by DOT regulations, 49 CFR § 392.7, and represents a relatively small part of the inspection process. In fact, it usually takes ten minutes or less to perform this function. Truckers, as the ultimate users of equipment, are merely responsible for verifying that the equipment is in roadworthy condition. If the trucker notices a problem, the ocean carrier or other equipment provider typically arranges to have the required repairs performed.

2. There are sound practical and policy reasons for having the trucker perform this brief test. In essence, the trucker is "the last line of precaution." The trucker is the last party to inspect the equipment before it enters onto public roadways. The trucker's role is similar to that of an airline pilot who performs a walk-around inspection just prior to flight. The pilot is not responsible for repairs, but is looking for obvious pre-flight discrepancies that need correction by maintenance personnel. So, too,

professional truck drivers are merely required to perform a basic visual inspection of the equipment they will operate on public roads. As a practical matter, it is unimaginable that a trucker would simply accept equipment and drive away with it assuming that someone else performed a roadability inspection. What truckers are asked to do as professional drivers is nothing more than what a driver would be expected to do for his or her own equipment. If drivers do not perforrn roadability inspections, they may be jeopardizing their own personal safety and that of the traveling public. It would be a major mistake in terms of public safety to eliminate or water down this responsibility.

3. It is fair and equitable that the visual inspection should be handled by truckers who, afterall, have the equipment in their possession and control for the greatest amount of time, and on the roads, where damage naturally and inevitably occurs. Once equipment leaves a depot or terminal there is no way the provider of the equipment can know whether tires, brakes or lights become faulty or are damaged. Nor can the provider show when the damage occurred. The trucker must have some responsibility for the equipment's roadworthiness once it leaves the gate. Therefore, as a practical matter, the performance of the roadability exam serves to fix a definite point in time before which ocean carriers or other equipment providers are responsible for inspection of equipment, and after which the truckers become responsible for inspection of equipment. Such a division in responsibility helps to clarify each party's obligations, so that confusion will not occur as to responsibility, and to ensure that repairs are made.

4. Presently, allocation of responsibility for roadworthiness of equipment is the result of longstanding customary business practices in the trade which is reflected in private contracts voluntarily entered into by ocean carriers and motor carriers. Typically, ocean carriers are contractually obligated to provide safe equipment, and motor carriers undertake to inspect the equipment that necessarily they have in their care and possession during inland transport. Thus, this is not solely a safety issue, but a business and economic issue of who will bear the responsibility of a roadability inspection. The government should not interfere or become involved in regulating private contractual relations or modifying economic terms absent some crisis or significant public safety situation, neither of which is present here. In effect, this is a form of economic reregulation, which is neither warranted nor authorized by statute.

5. All equipment is at some point dropped off at shipper facilities (either to load or deliver cargo), where shippers are typically unprepared and unqualified to check the roadworthiness of the equipment before returning it to its owner. There is nobody, other than the driver, to perform this function for millions of movements annually, many of which occur in the middle of the night or in inclement weather. It is not reasonable or practical to adopt amendments that would, in effect, require the presence of an ocean carrier or shipper representative at each shipper facility for purposes of inspecting each piece of equipment. Such a requirement would cost providers of equipment and shippers millions of dollars per year. The burden on the economy would be tremendous. In contrast, truckers who deliver and pick-up

equipment from shipper facilities are well qualified to perform basic inspections for roadworthiness and are experienced in doing so. Further, as noted above, the inspection burden for each driver is truly de minimus.

6. The importance of driver performed roadability inspection is heightened by the recent demand for and utilization of chassis pools where multiple providers use, share, and store equipment at a single location. This has reduced carrier and other provider costs significantly, and these cost savings have almost entirely been passed on to customers. However, it is simply not feasible for all providers to have inspections at thousands of chassis pool facilities when often there is no way to predict whose equipment will be present at a given time. At these multi-user facilities, the only party that has the opportunity and the knowledge to inspect the specific equipment being moved on the road is the trucker.

7. Significant delays at points of tendering equipment (i.e., port and inland terminals) will occur if the amendments proposed by the ATA are adopted. A limited number of full-time inspectors could not hope to perform roadability tests for every piece of equipment as quickly as numerous truckers can. The delays will slow the movement of cargo to and from ports, to and from rail terminals (in many rail terminals completely jamming already overcrowded facilities to the point of "gridlock"), and to and from customers. A significant increase in the volume of equipment and manpower at terminals and depots would be needed to attempt to avoid these delays. We estimate that the cost of the additional equipment, manpower, and inspection

facilities needed would cost millions of dollars per year. Such costs would, in turn, significantly increase costs to shippers, and ultimately consumers. This anticipated increase in costs is totally disproportionate to the benefits gained.

In contrast, the cost to truckers for the brief roadability inspection currently required is virtually nil. At present, the burden on motor carriers to share in responsibility for roadworthiness is relatively modest-several minutes to "kick" tires and flick lights on and off. Moreover, we believe that relatively few fines have been levied against truckers for equipment problems. Furthermore, it is likely that most drivers will, in any event, perform roadability tests for purposes of their own safety and security.

8. Given the existing and potential costs to both ocean carriers and truckers, the most cost-effective and efficient way to help ensure equipment roadworthiness is for motor carriers to be involved in the inspection of equipment. EIDA believes this system is fundamentally sound and has well served the needs of the shipping public and the need for public safety. At the same time, EIDA believes that motor carriers and ocean carriers, with the assistance of the FHWA, could work together in jointly developing improved training for truck drivers in the area of roadability inspections. In the international intermodal area, EIDA would be happy to facilitate the formation of a committee comprised of motor carriers, ocean carriers and other affected parties to address roadability training needs, as well as related issues as they arise. Such a committee would help to open the lines of communication between motor carriers and ocean

carriers, and. provide an arena for the cooperative resolution of any problems. However, we believe it would be a serious error to initiate a rulemaking in a well settled and well functioning area which would fundamentally and massively disrupt inspection, equipment turnaround time, equipment availability, liability insurance, and other well-settled arrangements relating to equipment use and interchange.

For the foregoing reasons, EIDA respectfully requests that the ATA Joint Petition request for rulemaking be rejected.

Respectfully submitted,

Jeffrey F. Lawrence PKAO

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July 6, 1998

INSTITUTE OF INTERN)NTAINER LESSORS

May 23, 1997

99 FEB 18 PM 12:53

DEPT. OF TRANSPORTATION

UPS Next Day Air

Ms. Jane Garvey, Acting Administrator
Federal Highway Administration
Nassif Building
400 7th Street, SW
Washington DC 20590

Re: Joint Petition by American Trucking Associations, Inc. & ATA Intermodal Conference Requesting Adoption of Rules Requiring Party Tendering Equipment to be used in Inter-modal Transportation Be Required to Ensure Roadworthiness Prior to Tendering Equipment to Motor Carrier

Dear Ms. Garvey:

On behalf of the Institute of International Container Lessors (IICL), the trade association for the international container and chassis leasing industry, this will oppose the petition referred to above (a copy of the first page is attached for identification purposes). IICL represents the owners of substantially in excess of 200,000 chassis or more than 40% of the US chassis fleet. IICL's members also own approximately 4.5 million TEU of containers or 45% of the world container fleet. A list of IICL's members is attached.

IICL objects to the petition on four grounds. (1) lack ofjurisdiction over leasing companies; (2) counterproductiveness of placing responsibility on leasing companies; (3) failure to demonstrate any practice by leasing companies of delivering defective chassis to truckers; and (4) failure to justify removal of responsibility from motor carriers.

The Business of Leasing Chassis and Containers

IICL represents the lessors of chassis and containers. A chassis is a skeletal type of trailer used exclusively to carry containers over the road or piggyback on railroad flat cars. Chassis are the safest and most desirable method of carrying containers over the road as they secure the containers by means of twistlocks fastening the container to the chassis structure at each comer. Chassis lessors lease their chassis equipment to steamship lines, railroads and others, sometimes for lengthy periods of time such as a

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year or more. During that interval the lessee steamship line, railroad or other operator, has exclusive responsibility for the condition and safety of the chassis. The leasing company generally does not know the location, much less the condition, of the chassis. At the end of the lease, the lessee returns the chassis to the leasing company's garage or depot. Upon its return, the chassis is inspected for damage and needed maintenance and any repair or maintenance needed is performed. IICL publishes a number of manuals related to inspection and maintenance of chassis as well as compliance with the federal inspection requirements.

Containers are the principal means of shipping manufactured goods across oceans. They are generally of standard 20 and 40 foot lengths and are leased in much the same way as chassis except primarily to ship lines. There are small numbers of domestic containers which are generally 48 or 53 feet in length.

The Petition

The petition submitted by the American Trucking Associations, Inc. and the ATA Intermodal conference (hereafter "ATA") requests that 49 CFR be amended in the following respects.

1. 93%. 1 is proposed to be amended to extend the scope of $396 not only to cover "[e]very motor carrier" but "any party who is tendering or interchanging a trailer, chassis, or container to a motor carrier."

2. §396.7 is proposed to be amended to provide not only that a motor vehicle shall not be operated in a condition likely to cause an accident or break down, but also that "no person shall tender or interchange a trailer, chassis or container in violation of" such requirement to a motor carrier and that no motor carrier shall certify to any person tendering a trailer, chassis or container to a motor carrier that the equipment complies with the relevant regulation unless the person tendering or interchanging has provided the motor carrier with "adequate equipment, time, and facilities to make a full inspection and necessary repairs."

3. §396.9 is proposed to be amended to permit FHWA personnel to enter and inspect a motor carrier's vehicles "and any trailer, chassis, or container at an intermodal terminal which is intended to be tendered or interchanged to a motor carrier.. . ."

4. 9390.37 is proposed to be amended to exculpate a motor carrier from the civil or criminal penalties currently provided "when a motor carrier has been tendered a trailer, chassis, or container that does not meet" the requirements of $393 and $396.1

Why the ATA Petition Should Be Denied

1. Lack of Jurisdiction Over Leasing Companies

One of the great principles of our government is that it is a government of laws and not of men. The Department is not free to create its own jurisdiction. The Department of Transportation is governed by the powers delegated to it by the Congress. The Congress has given the Department jurisdiction "over transportation by motor carrier, and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier" (49 USCA 913501). A "motor carrier" means "a person providing motor vehicle transportation for compensation" (49 USCA § 13 102). Under these grants of jurisdiction, 49 CFR Part 396 applies, as stated in §396.1 to "[e]very motor carrier, its officers, drivers, agents, representatives and employees directly concerned with the inspection or maintenance of motor vehicles..." §396.3 applies to "[e]very motor carrier". §396.9 authorizes FHWA personnel to inspect "motor carrier's vehicles in operation." 5390.37 imposes liability on any person who violates the rules in the subchapter relating to federal motor carrier safety regulations.

Neither the statute nor the regulations extend the powers of the Department beyond the regulation of "motor carriers" and the "procurement of" transportation "to the extent" "property" is transported by motor carriers. Leasing companies are not "motor carriers." They do not provide transportation, and no property is being transported when chassis are in the possession or control of leasing companies. There is no transportation of cargo being procured by the motor carrier. Leased chassis and containers do not transport cargo until after they are accepted by the lessee ship lines or railroads and filled by them or their customers with goods for transport. Moreover, tendering or interchanging is not "procuring." Possibly, the recipient of an interchange might be said to be procuring if it requested the equipment, but the provider (in this case the leasing company) is not procuring transportation. There is no suggestion in the statute that Congress intended to extend the jurisdiction of the Department to persons "tendering or interchanging" equipment. Unless and until Congress amends the law, the Department should not seek to extend its jurisdiction.

2. Counterproductiveness of Placing Responsibility on Leasing Companies

Enforcement of the requirements against a "party" or "person" tendering or interchanging trailers, chassis and containers would be counterproductive in the case of leasing companies. Where chassis (or containers) are leased, the leasing

company enters into an agreement with the lessee, generally a steamship line or railroad, and by contract transfers responsibility for the safe condition of the chassis or container to the steamship line or railroad The steamship line or railroad accepts that responsibility, and the leasing company does no? control or even learn the location or condition of its equipment until the equipment is returned, often years later. Attempting to transfer responsibility for a leased container or chassis from the driver of the tractor unit to a leasing company which has not seen or heard of its chassis or container for months or years is transferring the responsibility from a party in a position to control the condition of the equipment to a party which has no control at all and exercised whatever control it once had by requiring the lessee, steamship line or railroad to assume that responsibility. Transferring responsibility from a party with some ability to control the safety or transportation equipment to a party which has none is certainly counterproductive.

In practical business circumstances, the failure of such a transfer of responsibility has been demonstrated time and time again. In a few states, police officers have written tickets to the owners of equipment, even if it is leased. These tickets are eventually sent to the leasing company which has not seen its equipment for a number of months, although sometimes the tickets never reach the leasing company. Often the tickets are not received until months after the equipment has been returned by the first steamship line or railroad and been leased to another. It is usually impossible for the leasing company to track down in whose control the equipment was at the time the ticket was issued. Such tickets become a cost of doing business without accomplishing any of the deterrent or safety purposes for which the ticketing scheme was intended. The parties really in control of the equipment often get off scot free.

3. Failure to demonstrate any practice by leasing companies of delivering of defective chassis to truckers

There has been no demonstration of any substantial incidence of delivery of defective chassis or containers to truckers by leasing companies. The ATA petition is devoid of any objective surveys or studies showing that leasing companies have engaged in a practice of delivering defective equipment to anyone. In fact, the leasing companies' trade association, IICL, is probably the leading proponent of inspection and maintenance and of compliance with FHWA Regulations. IICL has published inspection guides and related manuals for chassis since 1977. IICL's current Guide for Container Chassis Inspection is a second edition published in 1988. IICL publishes recommendations for performance of the U.S. FHWA periodic inspections. IICL's manual for container chassis maintenance was first published in 1985. IICL conducts an annual chassis inspectors examination which has been passed by approximately 400 inspectors since it was first inaugurated in 1991.

The leasing industry has demonstrated its responsibility on repeated occasions and a much greater burden must be imposed upon proponents of extending jurisdiction before the regulations are changed.

4. Failure to justify removal of responsibility from motor carriers

The ATA petition seeks exemption from liability of any motor carrier which has "been tendered" equipment that does not meet Part 393 and 3% requirements. Whatever may be the merits of extending the jurisdiction of the Department to parties that are not "motor carriers", it would seem highly irresponsible to remove responsibility from the one party which has real one on one control of the equipment. Currently the regulations require a pre-trip inspection under $392.7, and impose various other requirements on drivers. §396.11 requires reports at the completion of each day. A §396.17 inspection is required at least annually.

These sections create an integrated framework under which the motor carrier is responsible for certain types of pre-trip and daily inspections. The equipment must meet certain other types of inspection performed by inspectors recognized by the Department on at least an annual basis. The driver's inspection is an essential part of this scheme . Any effort to exempt the driver destroys this scheme and would reduce roadworthiness and safety on the highway.

Conclusion

For all of these reasons, IICL requests that the Department reject the ATA petition.

Respectfully submitted,

INSTITUTE OF INTERNATIONAL CONTAINER LESSORS

Edward A. Woolley
Secretary and General Counsel

EAW/ad

cc: Mr. Neil Thomas
Office of Motor Carriers

Mr. Eugene K. Pentimonti, President
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c/iicl/letter/garvey.15may

INSTITUTE OF INTERNATIONAL CONTAINER LESSORS

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APRIL 1997

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